Subpart A—General

Source: 80 FR 28785, May 19, 2015, unless otherwise noted

GENERAL PROVISIONS

§18.10 Scope and purpose.

- (a) In general. These rules govern the procedure in proceedings before the United States Department of Labor, Office of Administrative Law Judges. They should be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding. To the extent that these rules may be inconsistent with a governing statute, regulation, or executive order, the latter controls. If a specific Department of Labor regulation governs a proceeding, the provisions of that regulation apply, and these rules apply to situations not addressed in the governing regulation. The Federal Rules of Civil Procedure (FRCP) apply in any situation not provided for or controlled by these rules, or a governing statute, regulation, or executive order.
- (b) Type of proceeding. Unless the governing statute, regulation, or executive order prescribes a different procedure, proceedings follow the Administrative Procedure Act, 5 U.S.C. 551 through 559.
- (c) Waiver, modification, and suspension. Upon notice to all parties, the presiding judge may waive, modify, or suspend any rule under this subpart when doing so will not prejudice a party and will serve the ends of justice.

§18.11 Definitions.

For purposes of these rules, these definitions supplement the definitions in the Administrative Procedure Act, 5 U.S.C. 551.

Calendar call means a meeting in which the judge calls cases awaiting hearings, determines case status, and assigns a hearing date and time.

Chief Judge means the Chief Administrative Law Judge of the United States Department of Labor Office of Administrative Law Judges and judges to whom the Chief Judge delegates authority.

Docket clerk means the Chief Docket Clerk at the Office of Administrative Law Judges in Washington, DC. But once a case is assigned to a judge in a district office, docket clerk means the docket staff in that office.

Hearing means that part of a proceeding consisting of a session to decide issues of fact or law that is recorded and transcribed and provides the opportunity to present evidence or argument.

Judge means an administrative law judge appointed under the provisions of 5 U.S.C. 3105.

Order means the judge's disposition of one or more procedural or substantive issues, or of the entire matter.

Proceeding means an action before the Office of Administrative Law Judges that creates a record leading to an adjudication or order.

Representative means any person permitted to represent another in a proceeding before the Office of Administrative Law Judges.

§ 18.12 Proceedings before administrative law judge.

- (a) Designation. The Chief Judge designates the presiding judge for all proceedings.
- (b) Authority. In all proceedings under this part, the judge has all powers necessary to conduct fair and impartial proceedings, including those described in the Administrative Procedure Act, 5 U.S.C. 556. Among them is the power to:
- (1) Regulate the course of proceedings in accordance with applicable statute, regulation or executive order;
- (2) Administer oaths and affirmations and examine witnesses;
- (3) Compel the production of documents and appearance of witnesses within a party's control;
- (4) Issue subpoenas authorized by law:
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Dispose of procedural requests and similar matters;
- (7) Terminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order;
 - (8) Issue decisions and orders;
- (9) Exercise powers vested in the Secretary of Labor that relate to proceedings before the Office of Administrative Law Judges; and

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(10) Where applicable take any appropriate action authorized by the FRCP.

§ 18.13 Settlement judge procedure.

- (a) How initiated. The Office of Administrative Law Judges provides settlement judges to aid the parties in resolving the matter that is the subject of the controversy. Upon a joint request by the parties or upon referral by the judge when no party objects, the Chief Judge may appoint a settlement judge. A settlement judge will not be appointed when settlement proceedings would be inconsistent with a statute, regulation, or executive order.
- (b) Appointment. The Chief Judge has discretion to appoint a settlement judge, who must be an active or retired judge. The settlement judge will not be appointed to hear and decide the case or approve the settlement without the parties' consent and the approval of the Chief Judge.
- (c) Duration of settlement proceeding. Unless the Chief Judge directs otherwise, settlement negotiations under this section must be completed within 60 days from the date of the settlement judge's appointment. The settlement judge may request that the Chief Judge extend the appointment. The negotiations will be terminated if a party withdraws from participation, or if the settlement judge determines that further negotiations would be unproductive or inappropriate.
- (d) Powers of the settlement judge. The settlement judge may convene settlement conferences; require the parties or their representatives to attend with full authority to settle any disputes; and impose other reasonable requirements to expedite an amicable resolution of the case.
- (e) Stay of proceedings before presiding judge. The appointment of a settlement judge does not stay any aspect of the proceeding before the presiding judge. Any motion to stay must be directed to the presiding judge.
- (f) Settlement conferences. Settlement conferences may be conducted by telephone, videoconference or in person at the discretion of the settlement judge after considering the nature of the case, location of the participants, availability of technology, and efficiency of administration.

- (g) Confidentiality. All discussions with the settlement judge are confidential; none may be recorded or transcribed. The settlement judge must not disclose any confidential communications made during settlement proceedings, except as required by statute, executive order, or court order. The settlement judge may not be subpoenaed or called as a witness in any hearing of the case or any subsequent administrative proceedings before the Department to testify to statements made or conduct during the settlement discussions.
- (h) Report. The parties must promptly inform the presiding judge of the outcome of the settlement negotiations. If a settlement is reached, the parties must submit the required documents to the presiding judge within 14 days of the conclusion of settlement discussions unless the presiding judge orders otherwise.
- (i) Non-reviewable decisions. Whether a settlement judge should be appointed, the selection of a particular settlement judge, and the termination of proceedings under this section are matters not subject to review by Department officials.

§ 18.14 Ex parte communication.

The parties, their representatives, or other interested persons must not engage in ex parte communications on the merits of a case with the judge.

§18.15 Substitution of administrative law judge.

- (a) Substitution during hearing. If the judge is unable to complete a hearing, a successor judge designated pursuant to §18.12 may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. The successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.
- (b) Substitution following hearing. If the judge is unable to proceed after the hearing is concluded, the successor judge appointed pursuant to §18.12 may issue a decision and order based upon the existing record after notifying the